

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated August 10, 2007 (hereinafter Office Action) have been considered but are believed to be improper. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant respectfully traverses the § 103(a) rejection of Claims 14, 15, 28 and 29 based in part upon U.S. Publication No. 2003/0181160 by Hirsch (hereinafter “Hirsch”) because Hirsch is not an available reference for § 103(a) rejections in view of 35 U.S.C. § 103(c). Section 103(c) indicates that subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of 35 U.S.C. § 102 shall not preclude patentability where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. MPEP § 706.01(l)(1). First, Hirsch is not available as a reference under § 102(a) or (b) because the first publication date of Hirsch (September 25, 2003) is later than at least the PCT filing date of the instant application, which is April 14, 2003. Hirsch is also not available as a reference under § 102(c) or (d). Thus, Hirsch must be asserted based upon § 102(e), (f), and/or (g).

Second, Hirsch is owned by Nokia Corporation as a result of the assignment recorded at Reel/Frame No. 012732/0127 on March 21, 2002, and the inventors of the instant invention were subject to an obligation to assign the instant invention to Nokia Corporation at the time the invention was made. That obligation was fulfilled as evidenced by the assignment of the instant application to Nokia Corporation recorded at Reel/Frame No. 016011/0301 on May 13, 2005. In view of the above-evidenced common ownership, Hirsch is not available as a § 103(a) reference thereby rendering the § 103(a) rejection improper. Applicant accordingly requests that the rejection be withdrawn.

In an effort to facilitate prosecution and without acquiescing to characterizations of the asserted art, Applicant’s claimed subject matter, or to the applications of the asserted art or combinations thereof to Applicant’s claimed subject matter, the independent claims have been amended to include limitations of original Claims 15 and 29. As these claims were

present in the original application, the amendments do not introduce new matter. Since no teachings have been presented to support a proper rejection of the subject matter of Claims 15 and 29, the subject matter of these claims is believed to be patentable, thereby now rendering each of claims 1-14 and 16-28 patentable. As U.S. Publication No. 2004/0049779 by Sjoblom admittedly does not teach the subject matter of original Claims 15 and 29 (page nine of the Office Action), the § 102(e) rejection of Claims 1-13 and 16-27 cannot be maintained. Applicant accordingly requests that the § 102(e) rejection be withdrawn.

It should be noted that Applicant does not acquiesce to the Examiner's statements or conclusions concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, common knowledge at the time of Applicant's invention, officially noticed facts, and the like. Applicant reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (KOLS.156US) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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